

KAYE SCHOLER LLP

The McPherson Building  
901 Fifteenth Street, N.W.  
Washington, D.C. 20005-2327  
202 682-3500  
Fax 202 682-3580  
www.kayescholer.com

February 27, 2004

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: Public Notice DA 04-378  
RM-10321

10821

Dear Ms. Dortch:

On behalf of Nauticast Schiffsnavigationssysteme AG, we are transmitting herewith an original and four (4) copies of its "Comments" in the above-referenced matter.

Should there be any questions concerning the enclosure, kindly communicate directly with undersigned counsel.

Very truly yours,

KAYE SCHOLER LLP

By:

  
Bruce A. Eisen

Enclosure

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**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.**

**RECEIVED**

FEB 27 2004

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

MariTEL, Inc.

Proposal for Shared Use of Maritime VHF  
Channels 87B and 88B for Automatic  
Identification Systems

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Public Notice DA 04-378

RM-10321

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**COMMENTS OF  
NAUTICAST SCHIFFSNAVIGATIONSSYSTEME AG**

Nauticast Schiffsnavigationssysteme AG ("Nauticast"), by its attorneys, hereby submits its comments in response to the Commission's above-referenced Public Notice, DA 04-378, released February 13, 2004 ("February 13 Public Notice"). In support thereof, the following is shown.

Nauticast has submitted comments in two separate proceedings generated by conflicting petitions filed by MariTel, Inc. ("Maritel") and the National Telecommunications and Information Administration ("NTIA"). On December 1, 2003, Nauticast filed comments in opposition to Maritel's petition for declaratory ruling wherein the latter sought a Commission pronouncement that shipborne Automatic Identification System ("AIS") transmitters should be precluded from operation on Channels 87B and 88B or on any other channel designated for use by VHF Public Coast ("VPC") stations. Nauticast's comments which were filed in response to the Commission's Public Notice, DA-03-3585, released November 7, 2003, showed that

Maritel's petition was legally unpersuasive and intended only to further that company's private interests. The November 7 Public Notice resulted in a full round of comments and/or pleadings from a number of interested and potentially affected parties. Subsequently, the Commission issued another Public Notice, DA 03-3669, released November 19, 2003, seeking comments in response to a further Maritel proposal that it be allowed to serve as the AIS frequency coordinator. On December 11, 2003, Nauticast and other parties opposed Maritel's request in a fresh round of pleadings.

Now, the Commission has requested still more comments resulting from yet another Maritel submission which Maritel apparently believes may serve as a foundation for a consensus approach. In addition to the proposal's lack of merit, Nauticast opposes the procedure of incrementally attempting to resolve questions that were set into motion months ago and that generated a significant amount of filings and counter-filings which now appear to be subsumed into the instant proceeding. Maritel should not be allowed to call the tune on this important matter. There should have been closure at an earlier date resulting from the positions of the parties who filed comments. Indeed, most of this controversy derives from Maritel's refusal to have meaningfully negotiated with the United States Coast Guard. It is that failure which continues to fuel its piecemeal filings, and it is possible that more alternatives may be offered until Maritel reaches its selfish goal. While the Commission surely has an interest in resolving difficult questions, it should not condone the uneconomical features of this proceeding by allowing Maritel to amend the record when it perceives a weakness in its previous arguments.

Maritel states in a February 9, 2004 letter to the Deputy Chief, Wireless Telecommunications Bureau, that it will support the previous NTIA request that Channels 87B

and 88B be allocated exclusively for AIS use, but only on the condition that Maritel be allowed to share the channels under its own proposal. The sharing proposal calls for the authorization of Channel 88B for AIS by only the Coast Guard, Maritel and ship stations. Moreover, the Coast Guard could only utilize the channels for shore station operations to support vessel traffic systems and surveillance applications for homeland security. Maritel would have the right to use the two AIS channels in all maritime areas for shore station operations to support non-Coast Guard AIS applications. Maritel further requests the Commission to adopt new methods to determine whether AIS devices adhere to emission standards and asks, *inter alia*, the Commission to suspend its current AIS equipment type acceptance process.

Maritel's sharing proposal suffers from a severe overall lack of specificity. This is rendered more serious in light of the importance to our country's security and to the legitimate goal of world-wide AIS expansion. There are several elements of the proposal which can, however, be adequately ascertained and which, if implemented, might court disaster. For instance, Maritel intends to use a time slot allocation not occupied by AIS for the use of other Maritel services. These other services are not named and remain undefined. See, Maritel's February 9, 2004 letter, page 2. This deficiency suggests that the channel may be encumbered by a high load factor at all times depending upon how much of the unused capacity Maritel appropriates. Such considerations are important because the level of service available to AIS users is a function of system loading. The greater the channel loading, the lower the quality of service that will be available to all users. While the AIS system anticipates high levels of loading, there is nevertheless a profound lack of extensive practical experience at this time. Indeed, the total effect on service resulting from system loading will only be ascertained when AIS is fully

deployed on all ships and recreation of vessels. Maritel's sharing proposal lacks the kind of detail necessary to evaluate this significant factor.

Maritel's proposal would also neutralize the Commission's careful consideration of past rules that it has enacted. Hence, Section 80.371(c)(3) of the Commission's Rules requires VPC geographic licensees in maritime areas to negotiate with the Coast Guard regarding what channels to select for AIS use. This is not to say that if the Coast Guard and the licensee are unable to reach an agreement, the Commission cannot select the channel pairs. However, under the present proposal, Maritel is not compelled to negotiate with the Coast Guard and will be able to take unilateral action which runs entirely counter to the rule and the considerations underlying the adoption of the rule. See, Amendment of the Commission's Rules Concerning Maritime Communications, 3rd Report and Order, and Memorandum Opinion and Order, PR Docket No. 92-257, 13 FCC Rcd 19853, 19876-19877 (1998). In fact, while Maritel offers unrestricted use of the frequencies to the Coast Guard for homeland security purposes, Maritel nevertheless reserves the absolute right to the frequencies and the information contained therein beyond Coast Guard uses! See, Maritel Proposal "Maritel and USCG Applications." Thus, monitoring by other entities (pilot organizations, etc.) would be restricted.

Perhaps the single most alarming deficiency that has affected each of Maritel's proposals is its lack of concern for international standards as reflected in its unbridled willingness to place its own economic interests over established protocols. For instance, even without regard to matters of homeland security, which Maritel would continue to usurp under its instant proposal, there remains the matter of carriage requirements imposed by the International Maritime Organization. AIS already enjoys widespread use in maritime operations because of the adoption

of carriage requirements and the standards included in IEC Standard 61993-2 which defines the testing requirements as well as the interface requirements for AIS systems, and mandates such systems that are sold commercially to meet performance, technical and operational standards for the universal AIS transponder. Manufacturers of AIS systems are approved in many jurisdictions under EIC Standard 61993-2. Nevertheless, a review of Maritel's latest proposal discloses that international standards will conflict with Maritel's own specifications. AIS systems have been marketed throughout the world and substantial costs have been incurred in obtaining various international approvals. As result, large numbers of ships have already been fitted with AIS equipment using the existing frequencies, and there exists significant anticipation of a worldwide surge in sales. Maritel's position would certainly further the interests of that company, but it will silence a multitude of potential AIS systems to be fitted on ships globally, and will render those systems ineffective in United States waters. Moreover, allowing Maritel to share the AIS channels as proposed, would likely restrict the growth of American AIS systems which, by necessity, have to take into account world-wide standards and regulations. The Commission should not accede to a proposal that would curtail AIS systems that have already received international approval, all to further the goals of a single licensee.

The Commission must consider the full scope of AIS operations before implementing rules or policies that favor only Maritel. Indeed, were the Maritel sharing proposal to be adopted by the Commission, technical uncertainty and the expanding AIS market would likely lead to open-ended and constant negotiation with Maritel alone, even as AIS needs and regulations evolve. This would result in a dangerous policy and could compromise matters of homeland security. Commission decisions must, of course, be founded upon reasoned decision making.

See, Committee for Community Access v. FCC, 737 F2d 74, 77 (D.C. Cir. 1984) (quoting Central Florida Enterprises, Inc. v. FCC, 598 F2d 37, 39 (D.C. Cir. 1978), cert. dismissed, 441 U.S. 957 (1979)). A fair analysis of the alternatives placed before the Commission require something more than the benefits that would accrue to Maritel. Rather, the entire fabric of global AIS communications should be addressed before the Commission reaches a conclusion.

Maritel's proposal also asks the Commission to modify the existing equipment acceptance requirements for AIS technology in order to prevent interference to other licensed Maritel channels. This represents more myopic thinking and is intended only to advance the agenda of a single party. In fact, Maritel's suggested modification is wholly out of step with the AIS manufacturing environment. All major manufacturers have previously subjected themselves to established type acceptance procedures and, as a result, are currently engaged in volume production. The International Conference on Maritime Security which convened under auspices of the International Maritime Organization, adopted several revisions to the Safety of Life at Sea ("SOLAS") Convention. One of the adopted revisions addresses the status of the implementation date for AIS. The Conference concluded that all ships over 300 tons and not required to be fitted with AIS at an earlier date, must fit AIS at the first safety equipment survey after July 1, 2004, but in any case not later than December 31, 2004. Maritel argues that the equipment acceptance requirements for AIS should be modified to prevent interference to other licensed Maritel channels, but such minor interference will become a fact of maritime life after December 31, 2004. Furthermore, given the deadline period at issue, there is insufficient time to authorize any other system. The Commission has substantial experience with type acceptance standards relating to the particular equipment at issue. There is no valid reason offered to further inquire

into the type acceptance standards presently in place.

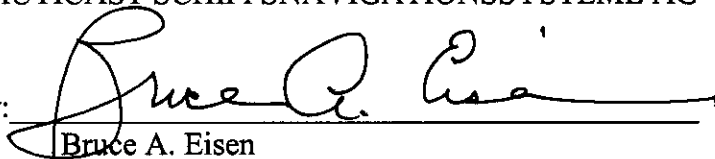
AIS manufacturers have produced an efficient and marketable product. The manufacturers have followed explicit Commission rules, and have developed a highly efficient system that can be used throughout the maritime world. With adequate coordination, AIS can be an extremely useful tool in preserving homeland security. Maritel has provided no persuasive argument that would compel the Commission to abdicate significant elements of homeland security to a single licensee that has failed to show a history of construction compliance or an expertise in matters relating to homeland security.

In light of the foregoing, Maritel's sharing proposal should be rejected.

Respectfully submitted,

NAUTICAST SCHIFFSNAVIGATIONSSYSTEME AG

By:

  
Bruce A. Eisen  
Its Attorney

KAYE SCHOLER LLP  
901 15th Street, N.W.  
Suite 1100  
Washington, D.C. 20005  
(202) 682-3500

February 27, 2004



**CERTIFICATE OF SERVICE**

I, Toni R. Daluge, a secretary in the law firm of Kaye Scholer LLP, do hereby certify that on this 27<sup>th</sup> day of February, 2004, a copy of the foregoing "Comments of Nauticast Schiffsnavigationssysteme A.G." was sent via United States mail, postage prepaid, to the following:

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
236 Massachusetts Ave, NE.  
Suite 110  
Washington, D.C. 20002

Maria Ringold \*  
Consumer and Governmental Affairs Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W. - Room CY-B529  
Washington, D.C. 20554

Christopher Nichols  
Commander, U.S. Coast Guard  
USCG Headquarters  
G-MWV, Vessel Traffic Management  
Washington, D.C. 20593-0001

D'Wana Terry \*  
Chief, Public Safety & Private Wireless Division  
Wireless Telecommunication Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W. - Room 4C405  
Washington, D.C. 20554

Keith Fickner \*  
Public Safety & Private Wireless Division  
Wireless Telecommunication Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W. - Room 4C423

Washington, D.C. 20554

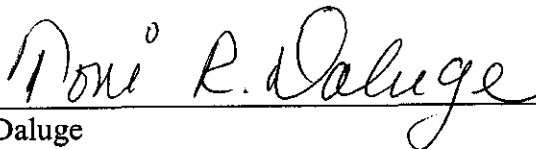
Russell H. Fox, Esq.  
Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C.  
701 Pennsylvania Ave N.W.  
Suite 900  
Washington, D.C. 20004

Qualex International, Inc. \*  
Portals II  
445 Twelfth Street, S.W. - Room CY-B402  
Washington, D.C. 20554

Tim Maguire \*  
Public Safety & Private Wireless Division  
Wireless Telecommunication Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W. - Room 4-C342  
Washington, D.C. 20554

Jeffrey Tobias \*  
Public Safety & Private Wireless Division  
Wireless Telecommunication Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W. - Room 2-C828  
Washington, D.C. 20554

Fredrick R. Wentland  
Associate Administrator  
Office of Spectrum Management  
United States Department of Commerce  
National Telecommunications and Information Administration  
14th & Constitution Ave, N.W.  
Washington, D.C. 20230

  
Toni R. Daluge

\* Via Hand Delivery